

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>NORTHLAND INSURANCE CO., a Minnesota corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>MALIBU LIMOUSINE, INC., an Illinois corporation, HINSDALE COACH LIMOUSINE, an Illinois corporation, ROBERT HOBERG and DONALD MROZEK,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">NO: 08 C 2901</p>
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MOTION FOR ENTRY OF JUDGMENT PURSUANT TO SETTLEMENT

Plaintiff, NORTHLAND INSURANCE COMPANY (“Northland”), by its attorneys, SmithAmundsen LLC, pursuant to FRCP 55 and 58, moves the Court for entry of judgment in its favor, and against Malibu Limousine (“Malibu”), Hinsdale Coach Limousine (“Hinsdale”), Robert Hoberg (“Hoberg”) and Donald Mrozek, (“Mrozek”), and for dismissal without prejudice of the Third Party Complaint filed by Malibu against Third Party Defendant Kamberos & Associates, Inc. (“Kamberos”) and, in support of said Motion, states as follows:

1. On May 19, 2008, Northland filed its Complaint for Rescission against Defendants Malibu, Hinsdale, Hoberg and Mrozek.

2. Northland's complaint sought to rescind a policy of Public Auto Liability Insurance issued to Patrick Miceli ("Miceli"). Subsequent to the issuance of the Northland policy, Miceli incorporated his business as "Malibu Limousine, Inc."

3. Northland's complaint alleged that the Application for the Northland policy contained material representations regarding the identity of drivers who would operate the insured limousine ("limo") and that the application misrepresented that the limo would be operated only by Miceli when, in fact, it was not Miceli's intent to operate the limo himself, but rather to give possession and control of the limo to Hinsdale, for operation by one or more of Hinsdale's drivers. Hoberg was the driver of the limo at the time of the accident in which Mrozek was injured.

4. On October 1, 2008, Hinsdale and Hoberg were defaulted for failure to appear or plead with respect to Northland's complaint. (CM/ECF Doc. 27.)

5. On June 19, 2009, Northland, on the one hand, and Malibu and Mrozek, in the other hand, reached an agreement to settle their differences, as part of a larger settlement which also includes the underlying *Mrozek* suit. All matters in controversy between Northland, Malibu and Mrozek have been resolved. As a part of the settlement, Mrozek and Malibu agree that Northland is entitled to a judgment rescinding its policy. Also, for the court's information, the settlement will terminate the potential tort liability of Hoberg and Hinsdale Limousine in the underlying *Mrozek* suit as well.

6. Malibu has filed a third party complaint against Kamberos, alleging that Kamberos negligently completed the application for the Northland policy. As of the preparation of this Motion, a dispute still exists between Malibu and Kamberos and the

settlement does not bear on said dispute. The controversy between them is between non-diverse citizens and does not involve a sum in excess of \$75,000.

7. Attached hereto as Exhibit 1 is a proposed Judgment prepared by Northland and agreed to by Malibu and Mrozek.

WHEREFORE, for the reasons set forth herein, Northland prays that the court enter judgment in its favor, rescinding its policy, dismiss the third party complaint of Malibu against Kamberos, without prejudice to Malibu's right to refile suit in State Court, and for such further relief as the Court deems just.

Respectfully submitted,

NORTHLAND
INSURANCE COMPANY

By: s/Richard Valentino
One of Its Attorneys

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CERTIFICATE OF SERVICE

Richard T. Valentino, an attorney, certify that on July 21, 2009, he electronically filed the foregoing Motion with the Clerk of the Court using the CM/EMF system which will send notification of such filing(s) to the parties listed below.

s/Richard T. Valentino

SERVICE LIST

Northland Insurance v. Malibu Limousine, Incorporated, et al.
No. 08 CV 02901

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